

# *United States v. Olmstead*

Federal Trials and Great Debates  
in United States History

## **Case Summary:**

- *United States v. Olmstead* was a criminal case involving violations of federal prohibition laws.
- The defendant, Roy Olmstead, challenged the use of evidence obtained through wiretaps of incriminating phone conversations.
- The Supreme Court upheld the use of the wiretaps under the Fourth and Fifth Amendments, although the Court later rejected this precedent.
- Today, the case is viewed as an important step in the evolution of privacy rights.

## **History of the Case:**

Ratified in 1919 and taking effect the next year, the Eighteenth Amendment outlawed the manufacture, sale, importation, and transportation of alcoholic beverages. Though the amendment authorized both state and federal governments to implement this prohibition, in practice much of the work of detecting and punishing alcohol-related offenses was taken up by the federal government. The National Prohibition Act, also known as the Volstead Act, imposed a stringent set of criminal penalties for prohibition violations. This greatly enhanced the jurisdiction and workload of both national law enforcement agencies and the federal courts, as criminals and gangs proved willing to risk the legal repercussions to make vast sums supplying illicit alcohol.

Roy Olmstead was one such criminal. A former Seattle police officer (he left the force after pleading guilty to bootlegging in 1920), Olmstead led a successful criminal enterprise that illegally imported alcohol from Canada in ships supposedly bound for Mexico. Using his connections with the local police, Olmstead built a large criminal network that was difficult for federal authorities to break using traditional law enforcement techniques. In 1924, federal investigators resorted to wiretaps of telephones at Olmstead's home and office to capture incriminating information. Olmstead apparently knew the authorities were listening in on some of his conversations, but continued to use the phone lines in the belief that any evidence obtained through that surveillance would be inadmissible in court since Washington state law forbade wiretapping. In combination with evidence obtained through Canadian police, the wiretapped information eventually led to the seizure of records that supported charges for conspiracy to violate the Volstead Act against Olmstead and dozens of other defendants.

At trial, the transcripts of the wiretapped conversations were not themselves admitted into evidence, though witnesses used them to refresh their recollections while testifying. District Judge Jeremiah Neterer also permitted the admission of records and of other incriminating evidence obtained as a result of the wiretaps. Olmstead was convicted and sentenced to four years imprisonment and an \$8,000 fine. On appeal to the U.S. Court of Appeals for the Ninth Circuit, Olmstead's lawyers argued that the wiretaps, and the use of any evidence obtained through them, violated the Fourth Amendment's prohibition on unreasonable searches and seizures. In an opinion written by Judge William Ball Gilbert, the court rejected this argument, reasoning that the purpose of the Amendment was to protect individuals from having their homes invaded by the government, rather than to immunize all private conversations from detection. Judge Frank Rudkin dissented from the court's decision, arguing that both the Fourth Amendment and the Fifth Amendment, which protects against self-incrimination, did not simply bar physical intrusions by the police, they were designed to preserve a broader right to privacy that encompassed phone conversations.

Olmstead appealed to the Supreme Court of the United States and, again, a divided Court ruled against him. Chief Justice William Howard Taft emphasized that government agents had not physically entered Olmstead's home or office and reasoned that the Fourth Amendment "can not be extended and

expanded to include telephone wires reaching to the whole world from the defendant's house or office. The . . . wires are not part of his house or office any more than are the highways along which they are stretched." Taft's rationale also drew support from the text of the amendment, which protected the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures," and did not reference either conversations or a right to privacy.

Nonetheless, four justices dissented from Taft's opinion. Justice Louis Brandeis wrote the most famous and legally significant of these dissents. The Fourth and Fifth Amendments, Brandeis argued, should not be interpreted too narrowly or too literally. The purpose of the Constitution was to create broad rules that would adapt to changing circumstances. The Fourth and Fifth Amendments reflected a wide-ranging concern with excessive government intrusion against privacy that was not confined to officials trespassing in one's home or rifling through one's papers. It was misguided, he argued, to expect the authors of these amendments to have anticipated modern innovations like the telephone. Similarly, he reasoned that while the only way the government could extract a confession when the Constitution was founded was by physical force or threats, the Fifth Amendment was not limited to those forms of coercion. Modern technology had opened up new means, including phone taps, for the government to procure self-incriminating evidence against an individual's will. Finally, Brandeis and Justice Oliver Wendell Holmes argued that, even if the wiretaps did not violate the Fourth or Fifth Amendments, the evidence obtained through them should have been excluded at trial because the wiretaps violated Washington law and the government should not commit one criminal act to investigate and punish another.

Although Brandeis was in the minority in *Olmstead*, his view of the right to privacy eventually won over a majority of the Supreme Court. In *Katz v. United States* (1967), the Court ruled warrantless wiretaps unconstitutional. In *Katz*, the Court rejected the *Olmstead* majority's logic that the Fourth Amendment merely forbade the government from trespassing on someone's property. Individuals using the phone, the Court reasoned, have a reasonable expectation of privacy.

### **Legal Issues:**

- Did the wiretaps violate the Fourth Amendment's prohibition on unreasonable searches and seizures?
- Did the wiretaps violate the Fifth Amendment's prohibition on compelled testimony against oneself?
- Should the evidence obtained through the use of the wiretaps be inadmissible because it was illegal under state law?

### **Questions for Discussion:**

- The telephone was invented approximately fifty years before *Olmstead*, but had only come into widespread use more recently. What difference might this have made to the Court's decision? What new technologies might cause difficulties for modern courts attempting to protect privacy?
- Fourth and Fifth Amendment challenges are usually brought by individuals, like *Olmstead*, who are guilty of the crimes with which they are charged. How might the knowledge of this guilt affect the courts hearing such appeals? Should guilt or innocence have mattered in *Olmstead*'s appeal?
- Most modern cellular phones record information (such as the phone's location at a given point in time) that can be more useful to investigators than a conversation. Should the government have access to this information? Can the places an individual travelled on public streets or transportation networks really be considered "private" in the way Justice Brandeis used that term?